IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 197 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

J V SOLANKI

Versus

STATE BANK OF SAURASTHRA

Appearance:

MR AS SUPEHIA for Petitioner

MR AS VAKIL for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 23/04/2001

ORAL JUDGEMENT

Rule. Mr.A.S.Vakil waives service of rule on behalf of the respondent-bank. In the facts and circumstances of the case and with the consent of the learned counsel for the parties, the matter is taken up

for final disposal today.

2. The petitioner is an employee of the respondent-Bank. The petitioner's initial appointment as Cashier-cum-Clerk was made on 2.1.1981. The petitioner was prosecuted for an offence punishable under section 302 of IPC. By judgment and order dated 25.6.1987 in Sessions Case No.184/86, the learned Sessions Judge convicted the petitioner and sentenced him to suffer life imprisonment. The petitioner was, therefore, dismissed from service by order dated 2.1.1988. The petitioner was still undergoing the sentence when the order of acquittal was passed by this Court in the petitioner's Criminal Appeal No.471 of 1987 on 17.9.1994. Pursuant to the said order of acquittal the respondent-Bank issued the order dated 2.6.1995 giving the petitioner fresh appointment (Annexure-D to the petition). By the said order the petitioner was not given reinstatement with continuity of service. It appears that subsequently the Bank also gave the petitioner Rs.4,33,485=41 ps towards backwages which the Bank subsequently withdrew.

3. In this petition the petitioner has prayed for a declaration that the order dated 2.6.1995 be treated as one of reinstatement with continuity of service rather than an order of fresh appointment. The petitioner has also prayed that the respondent - Bank be directed to refund the amount of Rs.433485=41 ps. with interest to the petitioner.

4. The petition is contested by affidavits-in-reply filed by the Manager (Law) of the respondent-Bank. The petitioner has filed a rejoinder-affidavit.

5. Having heard Mr.Supehia, learned counsel for the petitioner and Mr.A.S.Vakil, learned counsel for the respondent-bank, it appears to the Court that since the order of dismissal dated 2.1.1988 passed against the petitioner was solely based upon the petitioner's conviction by the Sessions Court and that ultimately the petitioner came to be acquitted by this Court, the respondents were bound to reinstate the petitioner in service with continuity of service. Hence the order dated 2.6.1995 (Annexure-D to the petition) treating the petitioner as a fresh employee of the respondent-bank cannot be treated as legal and valid.

6. This petition is accordingly allowed in the following terms:-

(i) The respondents shall treat the petitioner as having been reinstated in service with continuity

of service from the date of dismissal till 2.6.1995.

(ii) The respondents shall treat the petitioner as in continuous service during the aforesaid period without any break and calculate the petitioner's increments, seniority and other benefits on that basis.

(iii) The petitioner shall be at liberty to make a representation to the respondents for giving the petitioner backwages for the intervening period which the respondents shall consider in accordance with law within three months from the date of receipt of the representation.

7. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S.Shah,J)

(pathan)